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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/049,828 | 02/19/2002 | Takao Kasai | 0445-0318P | 2854 |

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EXAMINER

KIDWELL, MICHELE M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|------------------------------|--|
| Office Action Summary | Application No. 10/049,828 | Applicant(s) KASAI ET AL. | |
| | Examiner Michele Kidwell | Art Unit 3761 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2005.
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3 and 5-7 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1, 3 and 5-7 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 12, 2005 has been entered.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the a topsheet that is not thermally bonded to other sheet materials at the liquid shut off region must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate

changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 3 and 5 – 7 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for an absorbent article comprising an upstanding gather and a topsheet with a liquid shut off region, does not reasonably provide enablement for an absorbent article comprising an upstanding gather and a topsheet that is not thermally bonded to other sheet materials. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims. Claim 1 recites, among other things, an absorbent article including an upstanding gather and a topsheet with a liquid shut off region. The claim further states that the topsheet is not thermally bonded to other sheet materials at the liquid shut off region. However,

specification, including all embodiments shown in the figures, support a topsheet that is thermally bonded (since page 7, line 23 discloses the liquid shut off region as a heat seal) to at least the backsheet, which may be considered another sheet material.

Claims 1, 3 and 5 – 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The applicant has amended claims 1 and 6 – 7 to recite a topsheet that is not thermally bonded to other sheet materials at the liquid shut off region. Since the claim fails to recite a first sheet material to which the topsheet is thermally bonded, it is unclear what may be considered as “other sheet materials”. Correction and/or clarification are required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3 and 5 – 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Kitaoka et al. (US 5,662,637).

With respect to claim 1, Kitaoka et al. (hereinafter “Kitaoka”) discloses an absorbent article including a liquid permeable topsheet (1), a liquid impermeable backsheet (2) and a liquid retentive absorbent core (3) having side portions interposed

between the topsheet and the backsheet, said absorbent article being substantially vertically elongated (figure 1) and having an upstanding gather (10), wherein the topsheet (1) has a liquid shut off region in a linear shape over the longitudinal direction, (col. 3, lines 50 – 53) which prevents liquid migration within the topsheet, and the liquid shut off region is located at an area outside the periphery of the absorbent core and is formed independent of a joined section between the topsheet and a sheet material for forming the upstanding gather (figure 2), wherein the topsheet is not thermally bonded to other sheet materials at the liquid shut off region (figure 2), wherein the sheet material for forming the upstanding gather is disposed inward of the diaper from each side edge in the longitudinal direction of the diaper (figure 2), wherein a basal end of the upstanding gather is formed by joining the sheet material (10) to an upper part of each side portion of the liquid retentive absorbent core (figure 1), and wherein the topsheet extends beyond a basal end of the upstanding gather, at least a part of the extended section of the topsheet is joined to the backsheet and the liquid shut off region is located on the extended section of the topsheet as set forth in col. 3, lines 50 – 53 and in figure 2.

With reference to claim 3, Kitaoka discloses a topsheet that comprises a thermally fusible material and the liquid shut off region is formed by melting the thermally fusible material as set forth in col. 3, lines 50 – 53.

With respect to claim 5, Kitaoka discloses an absorbent article wherein the liquid shut off region is located over a widthwise direction of the absorbent article at both or one of the longitudinal end portions of the absorbent article as set forth in col. 3, lines

50 – 53.

As to claim 6, Kitaoka discloses an absorbent article wherein the article does not have a waist upstanding gather, as said waist upstanding gather, at both or one of the longitudinal end portions of the article, and the liquid shut off region is located over the widthwise direction of the article at the longitudinal end portion(s) where the upstanding gather is not located as set forth in the rejection of claim 1 and in figures 1 and 2.

Regarding claim 7, Kitaoka discloses a method for manufacturing an absorbent article including a liquid permeable topsheet (38), a liquid impermeable backsheet (42) and a liquid retentive absorbent core (44) interposed between the topsheet and the backsheet, said topsheet (38) having a liquid shut off region (92) in a linear shape (figure 1) for preventing liquid migration within the topsheet, said method comprising preliminarily forming the liquid shut off region at the topsheet and then arranging the topsheet at a predetermined location of the absorbent article, and said shut-off region being formed at an area outside of the periphery of the absorbent core as set forth in the rejection of claim 1 and in col. 3, lines 50 – 53. The examiner contends that the preliminary forming of the liquid shut off region at the topsheet may be considered the concept of providing the liquid shut off region along the periphery of the combined topsheet and backsheet. The actual arrangement of the topsheet at a predetermined location comes as a result of making the product.

Response to Arguments

Applicant's arguments filed October 12, 2005 have been fully considered but they are not persuasive.

With respect to the applicant's argument that the exposed zone on the Kitaoka reference causes "the wet back phenomena" and the claimed invention avoids such a phenomena, the examiner contends that the Kitaoka reference meets all of the claimed limitations as set forth in the preceding rejection. In order to patentably distinguish the claimed invention from the prior art, the claimed invention must result in a structural difference between the claimed invention and the prior art.


With respect to the applicant's argument that the claimed invention prevents liquid migration within the topsheet, it is unclear how the claimed invention differs from the prior art, which also prevents liquid migration within the topsheet, since Kitaoka discloses that the topsheet is bonded by heat welding (col. 3, lines 50 – 53 and col. 3, line 66 to col. 4, line 2) just as the claimed invention discloses on page 7, line 23.

Likewise, the applicant argues that the topsheet is not thermally bonded to other sheet materials in the instant application, but Kitaoka discloses the same as shown in figure 2. Areas of bonding are depicted in the figure as heat (between the gather and topsheet and between the topsheet and the backsheet) and as elastic (between the side flap and the backsheet). Since all disclosed bonding is depicted, it can be reasonably assumed that there is no other bonding within the article.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michele Kidwell
Primary Examiner
Art Unit 3761